

*MODEL AGREEMENT FOR PRECONSTRUCTION ENGINEERING AND
DESIGN (PED) IN ACCORDANCE WITH SECTION 105(c) OF PUBLIC LAW 99-662*

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF NON-FEDERAL SPONSOR]
FOR PRECONSTRUCTION ENGINEERING AND DESIGN (PED) OF THE
[FULL NAME OF PROJECT]

THIS AGREEMENT entered into this _____ day of _____, by and between the Department of the Army (hereinafter the “Government”) represented by **[TITLE OF PERSON SIGNING THIS AGREEMENT]** and **[FULL NAME OF NON-FEDERAL SPONSOR]** (hereinafter the “Non-Federal Sponsor”) represented by **[TITLE OF PERSON SIGNING THIS AGREEMENT]**.

WITNESSETH, THAT:

[USE THE FOLLOWING PARAGRAPH FOR UNAUTHORIZED PROJECTS]

WHEREAS, the Government and the Non-Federal Sponsor anticipate that construction or implementation of the **[FULL NAME OF PROJECT]** (hereinafter the “Project”, as described in Article I.A. of this Agreement) at **[LOCATION]** will be authorized by the Congress of the United States (hereinafter the “Congress”);

[USE THE FOLLOWING PARAGRAPH FOR AUTHORIZED PROJECTS]

WHEREAS, construction or implementation of the **[FULL NAME OF PROJECT]** (hereinafter the “Project”, as described in Article I.A. of this Agreement) at **[LOCATION]** was authorized by Section _____ of the _____ Act of _____;

WHEREAS, Section 105(c) of Public Law 99-662 (33 U.S.C. Section 2215) [100 Stat 4089] provides that the costs of design of a water resources project shall be cost shared in the same percentage as the purposes of the project;

WHEREAS, the Government and the Non-Federal Sponsor agree that the Non-Federal Sponsor shall contribute 25 percent of the costs for Preconstruction Engineering and Design (hereinafter “PED”, as defined in Article I.B. of this Agreement) of the Project during the period of PED, as defined in Article I.D. of this Agreement;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in paying for PED in accordance with the terms of this Agreement; and

[USE THE FOLLOWING PARAGRAPH FOR HARBOR PROJECTS:]

WHEREAS, the Government is authorized, pursuant to 33 U.S.C. 560, to receive and expend voluntarily contributed funds for any authorized work of public improvement of rivers and harbors whenever such work and expenditures may be considered by the Chief of Engineers as advantageous to the interests of navigation.

[USE THE FOLLOWING PARAGRAPH FOR PROJECTS THAT INCLUDE FLOOD CONTROL:]

WHEREAS, the Government is authorized, pursuant to 33 U.S.C. 701(h), to receive and expend voluntarily contributed funds in connection with funds appropriated by the United States for any authorized flood control work whenever such work and expenditure may be considered by the Secretary of the Army as advantageous in the public interest.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean **[DESCRIBE THE PROJECT FOR WHICH THE PRECONSTRUCTION ENGINEERING AND DESIGN (PED) WILL BE UNDERTAKEN PURSUANT TO THIS AGREEMENT IN DETAIL. IF THE "PROJECT" IS A SEPARABLE ELEMENT OF A PROJECT, SPECIAL CARE SHOULD BE EXERCISED TO ENSURE THAT THE WORK TO BE UNDERTAKEN PURSUANT TO THIS AGREEMENT IS ACCURATELY DESCRIBED]**, as generally described in the **[INDICATE TYPE OF REPORT: [1] Report of the Chief of Engineers, dated _____, _____. [2] [SPECIFY FEASIBILITY REPORT WITH ENGINEERING APPENDIX, GENERAL RE-EVALUATION REPORT, OR OTHER REPORT THAT DEFINES THE SCOPE OF THE "PROJECT"]]**, dated _____, ____ and approved by **[CHOOSE THE APPROPRIATE ONE: Assistant Secretary of the Army (Civil Works) / Chief of Engineers / Commander, _____ Division]** on _____, _____.]

B. The term "PED" shall mean all activities directly related to engineering and design of the Project for which financial obligations are made during the period of PED in accordance with the terms of this Agreement.

C. The term “total PED costs” shall mean all costs incurred by the Non-Federal Sponsor and the Government for PED. Subject to the provisions of this Agreement, the term shall include, but not necessarily be limited to: costs of applicable planning and evaluation; costs of applicable engineering and design; costs of environmental assessments and documentation; costs of identification, survey and evaluation of historic properties; costs of participation in the PED Coordination Team in accordance with Article III of this Agreement; and costs of audit in accordance with Article VII of this Agreement. The term does not include any costs due to the design of betterments, any costs of dispute resolution under Article V of this Agreement, or any costs resulting from financial obligations made before or after the period of PED.

D. The term “period of PED” shall mean the time period commencing when the Division Engineer’s Public Notice for the feasibility report for the Project is issued and ending when the U.S. Army Engineer for the _____ District (hereinafter the “District Engineer”) notifies the Non-Federal Sponsor that plans and specifications for the first construction or implementation contract have been approved, or when initial Federal funds appropriated for construction or implementation of the Project are allocated to the U.S. Army Corps of Engineers District, _____, whichever occurs first.

E. The term “fiscal year” shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

F. The term “betterment” shall mean a change in the design of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element, or the addition of an element of the Project that the Government would not otherwise accomplish.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously perform PED, applying those procedures usually applied to the engineering and design of Federal projects, pursuant to Federal laws, regulations, and policies. The Government shall not initiate in-house PED work or issue the solicitation for a contract for work until the Non-Federal Sponsor and the Government have executed a PED Agreement.

1. To the maximum extent possible, the Government shall perform PED in accordance with the Project Management Plan for the Project and, if applicable, any Project Study Plan for a reevaluation during PED, developed by the Government after consultation with the Non-Federal Sponsor.

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contracts modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all PED (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

B. The Non-Federal Sponsor shall provide, during the period of PED, a contribution equal to 25 percent of total PED costs. If the Government projects that the value of the Non-Federal Sponsor's contributions under Articles III and VII will be less than 25 percent of total PED costs, the Non-Federal Sponsor shall provide a cash contribution, in accordance with Article IV.B. of this Agreement, in the amount necessary to meet its 25 percent share of total PED costs.

C. The Government shall perform a final accounting in accordance with Article IV.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B. and E. of this Article and Articles III and VII of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B. and E. of this Article.

D. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total PED costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

E. The Non-Federal Sponsor may request the Government to design betterments. Such requests shall be in writing and shall describe the betterments requested to be designed. If the Government in its sole discretion elects to design the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested design of betterments and shall pay all such costs in accordance with Article IV.C. of this Agreement.

F. In accordance with paragraph IV.E. of this Agreement, the Government shall afford credit, toward the share of total project costs for the Project that is required of the non-Federal

entity or entities executing the Project Cooperation Agreement or Agreements for the Project or separable element thereof, for the Non-Federal Sponsor's 25 percent share of total PED costs required under paragraph B. of this Article.

G. This Agreement shall not be construed as obligating either party to seek funds for, or to participate in, construction or implementation of the Project or a separable element thereof or as relieving the Non-Federal Sponsor of any future obligation under the terms of any Project Cooperation Agreement.

ARTICLE III - PED COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a PED Coordination Team. Thereafter, the PED Coordination Team shall meet regularly until the end of the period of PED. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the PED Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the PED Coordination Team informed of the progress of PED and of significant pending issues and actions, and shall seek the views of the PED Coordination Team on matters that the PED Coordination Team generally oversees.

C. Until the end of the period of PED, the PED Coordination Team shall generally oversee issues related to PED, including scheduling of reports and work products; development of plans and specifications; anticipated real property and relocation requirements for construction or implementation of the Project; contract awards and modifications; contract costs; the Government's cost projections; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement and rehabilitation of the Project; and other related matters.

D. The PED Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the PED Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the PED Coordination Team. The Government, having the legal authority and responsibility for PED, has the discretion to accept, reject, or modify the PED Coordination Team's recommendations.

E. The costs of participation in the PED Coordination Team during the period of PED shall be included in total PED costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE IV - METHOD OF PAYMENT

[FOR ARTICLE IV USE OPTION I IF PED WORK WILL BE COMPLETED WITHIN ONE FISCAL YEAR OR IF THE NON-FEDERAL SPONSOR ELECTS TO PROVIDE ITS SHARE IN ONE LUMP SUM. OTHERWISE, USE OPTION II.]

OPTION I

A. The Government shall maintain current records of contributions provided by the parties and current projections of total PED costs. At least quarterly, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total PED costs, of total costs due to the design of betterments, of each party's share of total PED costs, and of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B. and II.E. of this Agreement. On the effective date of this Agreement, total PED costs are projected to be \$_____, and the Non-Federal Sponsor's cash contribution required under Article II.B. of this Agreement is projected to be \$_____. **[NOTE: PROJECTIONS SHOULD BE INFLATED THROUGH THE PERIOD OF PED.]** Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Article II.B. of this Agreement in accordance with the following provisions: Not later than 30 calendar days after execution of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected cash contribution under Article II.B. of this Agreement. Not later than 30 calendar days after such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT]**" to the District Engineer. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the Non-Federal Sponsor's cash share of financial obligations for PED incurred prior to such payment; and (b) the Non-Federal Sponsor's cash share of financial obligations for PED as they are incurred during the remainder of the period of PED. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet the Non-Federal Sponsor's cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check for the full amount of the additional required funds.

OPTION II

A. The Government shall maintain current records of contributions provided by the parties and current projections of total PED costs. By **[SPECIFIC DATE, BASED ON THE TIMING OF THE NON-FEDERAL SPONSOR'S FISCAL CYCLE]** of each year and at

least quarterly thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total PED costs, of total costs due to the design of betterments, of each party's share of total PED costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B. and II.F. of this Agreement, and of the funds the Government projects to be required from the Non-Federal Sponsor in accordance with Articles II.B. and II.F. of this Agreement for the upcoming fiscal year. On the effective date of this Agreement, total PED costs are projected to be \$_____, and the Non-Federal Sponsor's cash contribution required under Article II.B. of this Agreement is projected to be \$_____. **[NOTE: PROJECTIONS SHOULD BE INFLATED THROUGH THE PERIOD OF PED.]** Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Article II.B. of this Agreement in accordance with the provisions of this paragraph.

[ARTICLE IV.B.1. OFFERS THE NON-FEDERAL SPONSOR THREE MECHANISMS FROM WHICH TO CHOOSE IN DECIDING HOW TO PROVIDE ITS CASH CONTRIBUTION TO THE FEDERAL GOVERNMENT. THE NON-FEDERAL SPONSOR SHOULD INDICATE ITS CHOICE DURING THE COURSE OF NEGOTIATING THE AGREEMENT. THE AGREEMENT SHOULD REFLECT ONLY ONE MECHANISM.]

1. Not later than 30 calendar days after execution of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet the Non-Federal Sponsor's cash share of projected financial obligations for PED through the first fiscal year of PED. Not later than 30 calendar days after such notice the Non-Federal Sponsor shall **[INDICATE MECHANISM: [1]** provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT]**" to the District Engineer. **[2]** verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor. **[3]** present the Government with an irrevocable letter of credit acceptable to the Government for the required funds.]

2. For the second and subsequent fiscal years of PED, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the Non-Federal Sponsor's cash share of projected financial obligations for PED for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through the funding mechanism specified in Article IV.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the Non-Federal Sponsor's cash share of financial obligations for PED incurred prior to the payment made under Article IV.B.1 of this Agreement; and (b) the Non-Federal Sponsor's cash share of financial obligations for PED as they are incurred during the remainder of the period of PED.

4. If at any time during the period of PED the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's cash share of projected financial obligations for PED for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required, and the Non-Federal Sponsor, no later than 30 calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanism specified in Article IV.B.1. of this Agreement.

[INCLUDE PARAGRAPHS C AND D FOR BOTH OPTIONS I AND II IN ARTICLE IV.]

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.F. this Agreement, the Non-Federal Sponsor shall **[INDICATE MECHANISM: [1]** provide the Government with the full amount of the funds required to pay for such additional work by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT]**" to the District Engineer. **[2]** verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the full amount of the funds required to pay for such additional work in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor.] The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check for the full amount of the additional required funds.

D. Upon completion of PED or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total PED costs, each party's contribution provided thereto, and the Non-Federal Sponsor's required share thereof. The final accounting also shall determine costs due to design of betterments and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.E. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor under Articles II.B., II.E., III and VII of this Agreement is less than its required 25 percent share of total PED costs plus costs due to any design of betterments provided in accordance with Article II.E. of this Agreement, the Non-Federal Sponsor shall, no later than 90

calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required 25 percent share of total PED costs plus costs due to any design of betterments provided in accordance with Article II.E. of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor under Articles II.B., II.E., III and VII of this Agreement exceeds its required 25 percent share of total PED costs plus costs due to any design of betterments provided in accordance with Article II.E. of this Agreement, the Government shall afford credit to the Non-Federal Sponsor during the construction or implementation of the Project (other than the 5 percent cash share for structural flood control), or the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

E. The Government shall afford credit for the Non-Federal Sponsor's 25 percent share of total PED costs required under paragraph B. of this Article, and for any voluntary cash contribution provided by the Non-Federal Sponsor in accordance with paragraph C. of this Article, in accordance with this paragraph. The Government shall afford such credit only after any cash payment to the Government or refund to the Non-Federal Sponsor required by paragraph D. of this Article has been made. To afford such credit, the Government shall apply the amount credited toward the cash share that non-Federal entities are required to provide toward total project costs for the Project. **[THE FOLLOWING SHOULD BE INCLUDED ONLY FOR PROJECTS, OR SEPARABLE ELEMENTS THEREOF, THAT HAVE COSTS ASSIGNED TO STRUCTURAL FLOOD CONTROL:** However, any amount credited for the value of the Non-Federal Sponsor's contributions toward total PED costs provided in accordance with Articles III and VII of this Agreement shall not be applied toward the 5 percent cash share required by Section 103(a)(1) (A) of the Water Resources Development Act of 1986, Public Law 99-662, as amended.] Nothing in this Agreement shall be construed to obligate the Government to repay the Non-Federal Sponsor, in whole or in part, for its 25 percent share of total PED costs or for the portion of any voluntary cash contribution that is expended for total PED costs.

1. If Federal funds are appropriated for construction or implementation of the Project, and if the Government and a non-Federal entity enter into a Project Cooperation Agreement for construction or implementation of the entire Project, then the Government shall afford credit for the entire 25 percent share and the entire voluntary cash contribution, if any, and the Government may expend for construction or implementation of the Project the portion of any voluntary cash contribution that is not expended for total PED costs.

2. If Federal funds are appropriated for construction or implementation of the Project or a separable element thereof, and if the Government and a non-Federal entity enter into a Project Cooperation Agreement for construction or implementation of such separable element, then the

Government shall afford credit for such portion of the 25 percent share and such portion of the voluntary cash contribution, if any, as are allocable to such separable element, and the Government may expend for construction or implementation of such separable element the portion of any voluntary cash contribution that is not expended for total PED costs.

3. If no Federal funds are appropriated for construction or implementation of the Project or a separable element thereof, or if the Government and a non-Federal entity do not enter into a Project Cooperation Agreement for construction or implementation of the Project or a separable element, then the Government shall not afford any credit for such 25 percent share or for such voluntary cash contribution, if any; however, the Government shall, subject to the availability of funds, refund to the Non-Federal Sponsor the portion of any voluntary cash contribution that is not expended for total PED costs.

ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI - INDEMNIFICATION

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from PED for the Project and PED for any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of PED and resolution of all relevant claims arising therefrom. To the extent permitted

under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-128 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-128, and such costs shall be included in total PED costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total PED costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE VIII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE IX - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE X - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XI - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Articles II.B., II.E. or IV of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on PED is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet PED expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to PED and proceed to a final accounting in accordance with Article IV.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred.

ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

[FULL ADDRESS]

If to the Government:

FULL ADDRESS]

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

[INCLUDE ARTICLE XIV ONLY IF THE NON-FEDERAL SPONSOR IS A STATE AGENCY OR DERIVES ITS FUNDS DIRECTLY FROM STATE LEGISLATIVE APPROPRIATIONS AND THE STATE IS LIMITED BY ITS CONSTITUTION OR BY STATE STATUTES FROM COMMITTING FUTURE STATE LEGISLATIVE APPROPRIATIONS.]

ARTICLE XIV - OBLIGATIONS OF FUTURE APPROPRIATIONS

Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the **[LEGISLATURE]** of the State of [_____].

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by **[TITLE OF PERSON SIGNING THIS AGREEMENT]**.

THE DEPARTMENT OF THE ARMY

THE **[FULL NAME OF NON-FEDERAL SPONSOR]**

BY: **[SIGNATURE]**
 [TYPED NAME]
 [TITLE IN FULL]

BY: **[SIGNATURE]**
 [TYPED NAME]
 [TITLE IN FULL]

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the **[FULL NAME OF NON-FEDERAL SPONSOR]**, that the **[FULL NAME OF NON-FEDERAL SPONSOR]** is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the **[FULL NAME OF NON-FEDERAL SPONSOR]** in connection with Preconstruction Engineering and Design (PED) of the **[FULL NAME OF "PROJECT"]**, and that the persons who have executed this Agreement on behalf of the **[FULL NAME OF NON-FEDERAL SPONSOR]** have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____.

[SIGNATURE]

[TYPED NAME]

[TITLE IN FULL]

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[SIGNATURE OF THE PED AGREEMENT SIGNATORY]

[TYPED NAME]

[TITLE IN FULL]

DATE: _____

